IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1214 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SARDARGADH VIVID KARYAKARI SAHAKARI MANDALI LTD

Appearance:

MR KN RAVAL, APP for Appellant

MR KS NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE J.R.VORA

Date of decision: 11/07/2000

ORAL JUDGMENT : [PER: BHATT, J.]

1. By this acquittal appeal, under section 378 of Cri.P.C. 1973, against the order of acquittal recorded by the learned Special Judge, Junagadh, in Special Case No. 11 of 1987 on 8.9.1992, the Agriculture Inspector, through appellant - State of Gujarat, has questioned its legality and validity.

2. The respondents are the original accused persons, who came to be charged for having committed offences punishable under Section 13(1)(a) of Fertilizer (Control) Order, 1957 read with Sections 3 and 7 of Essential Commodities Act, 1955, as the sample of fertilizer collected from the place of accused No.1 - Sardargadh Vivid Karyakari Sahakari Cooperative Society Ltd, was not in conformity with the requisite standard prescribed. They were charged on 5.5.1990, to which they denied. The prosecution, therefore, placed reliance on the evidence of Agriculture Inspector and other witnesses but no defence evidence has been led. Case of the prosecution is that the Agriculture Inspector - complainant, upon visiting, found a sample of fertilizer known as `Poshak' from the possession of respondent No.1 original accused No.1 Sardargadh Vivid Karyakari Sahakari Mandali Limited. This happened on 7.12.1983. Sample was collected in presence of accused, and it was sealed in three packets. One packet was sent to the Chemical Analyzer, on 12.10.1983, by the Agriculture Inspector. Upon the report being received, it was noticed that the sample was found of deteriorating quality. Therefore, after giving notice to the accused persons, and collecting the necessary material, a criminal case came to be lodged, which was tried by Special Judge, Junagadh, being Special Case No.11 of 1987, but upon the appreciation of evidence, and considering the proposition of law, recorded acquittal by passing impugned judgment and order on 8.9.1997, which is precisely before us in this Appeal.

3. The acquittal came to be recorded, firstly on the ground that, the requisite procedure for collecting the sample, so as to exclude the probability or any suspicion of manipulation, could not be observed. Therefore, the trial court, firstly, recorded the acquittal on the ground that the procedure, which was followed by the Agriculture Inspector while taking the sample of the fertilizer from the accused, is not proved to be as per prescribed procedure, under the Fertilizer (Control) Order, 1957 and holding that the procedure being doubtful, the benefit should go to the accused.

4. We have heard learned Addl. Public Prosecutor and noticed from the record that, this ground pursued and recorded, by the learned Special Judge, cannot be said to be unjust, unreliable or illegal, requiring our interference in the acquittal appeal since this ground goes to the root of the matter. The other grounds, on which also the acquittal is recorded, is not required to be examined threadbare and meticulously in this matter.

5. In the result, the impugned acquittal is required to be affirmed only on the aforesaid ground only without entering into the merits of other grounds, on which the acquittal is recorded. The Acquittal Appeal, is therefore, required to be dismissed and accordingly the same is dismissed.

---

p.n.nair